

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**RECOVERY LIMITED PARTNERSHIP,
Plaintiff,**

v.

Civil Action No.: 2:87-cv-00363

**UNIDENTIFIED, WRECKED AND ABANDONED
SAILING VESSEL, etc.,
Defendant.**

MEMORANDUM IN SUPPORT OF MOTION TO FILE UNDER SEAL

Recovery Limited Partnership (the “Plaintiff” or “RLP”), by counsel, submits this memorandum in support of its motion to seal Exhibit 1 and Exhibit 2, both attached hereto. Exhibit 1 is a Declaration of Craig T. Mullen. Exhibit 2 is a Declaration of John B. Pidcock. The Court has directed RLP to file information concerning 2024 salvage operations under seal for review and requested an update on the status of the BBC documentary. *See* Order, D.E. 296.

There are three requirements for sealing court filings: (1) public notice with opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and reject alternatives to sealing. *Flexible Benefits Council v. Feldman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Even when no party challenges a motion to seal, the Court must still ensure the motion is supported by good cause. *Auburn Univ. v. IBM Corp.*, No. 3:0-cv-694-MEF, unpublished, 2010 WL 3927737 (M.D. Ala. Oct. 4, 2010).

Mr. Mullen has been retained by the Trustee of the RLP Trust to serve as scientific and salvage advisor for any future salvage. Mr. Mullen has done and continues to do the work necessary to solicit and obtain proposals from qualified salvors for the future salvage of the wreck

site. In doing so, offerors designated their proposals as confidential due to the commercial sensitivity of the information provided by them.

Publicly disclosing the identity of the proposers would undermine the ability of the Trustee to evaluate and negotiate with them and other potential offerors. It would also work hardship to offerors if their commercially sensitive information were made public. Likewise, if potential offerors know the identity of others, it could undermine any competitive advantage each has against other potential offerors. It could have a chilling effect on the ability of the Trustee to receive other offers, or effectively negotiate with offerors.

With regard to the status of the BBC documentary, the contract with the BBC contains a confidentiality clause that restricts the Trustee from making public statements before the BBC makes its own announcements about the program. The Trustee is permitted to inform the court in a sealed filing about the status of the broadcast.

RLP is contemporaneously filing with this motion a notice of filing under seal which is the required public notice providing opportunity for objection. RLP submits that, given the commercial interests at stake, there is no “less drastic alternative” to the sealed filing that the Court has ordered.

Accordingly, RLP moves that this Court enter the proposed order attached to the motion sealing Exhibit 1 and Exhibit 2 to remain sealed in accordance with the terms of the proposed order.

This 14th day of June, 2023.

/s/ James L. Chapman, IV
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June, 2023, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to all registered filers.

/s/ James L. Chapman, IV
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